IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.12.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM

AND

THE HON'BLE MR. JUSTICE S. TAMILVANAN

WRIT APPEAL Nos.487 and 495 of 1997

and WAMP.No.1755 of 2006

M/s. Ashok Leyland finance Limited
66 Chamiers Road
Chennai 600 018 rep. By its
Managing Director S. Nagarajan. .. Appellant in W.A.No.487 of 1997

P. Nataraja Sastry .. Appellant in W.A.No.495 of 1997

vs.

1. Appropriate Authority
   Income-tax Department
   New Incometax Building
   No.108 Uthamar Gandhi Salai
   First Floor, Chennai 600 034.

2. P. Nataraja Sastry .. Respondents in W.A.No.487 of 1997.

1. Union of India rep. By
   Secretary to Government
   Ministry of Finance, New Delhi.

2. Appropriate Authority
   Income-tax Department
   New Incometax Building
   No.108 Uthamar Gandhi Salai
   First Floor, Chennai 600 034.

3. M/s. Ashok Leyland finance Limited
   66 Chamiers Road
   Chennai 600 018 rep. By its
   Managing Director S. Nagarajan. .. Respondents in W.A.No.495 of 1997.

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Writ Appeals filed under Clause 15 of the Letters Patent against the common order of His Lordship Mr. Justice Jayasimha Babu in W.P.Nos.4584 and 4700 of 1993 dated 31.03.1997.

W.P.Nos. 4584 and 4700/93:- Petition under Article 226 of the Constitution of India to issue a writ of 1. certiorarified Mandamus to call for the records relating to the petitioner on the file of the 1st respondent in No.AA/MDS/12/395/2/92-93 and quash the impugned order dated 23.2.93 and consequently direct the 1st respodnent to grant no objection certificate to the Petitioner (W.P.No.4584/93)

2. Certiorarified Mandamus calling for the records comprised in the proceedings of the 2nd Respondent dated 23.2.1993 in A.A.MDS 12 (395) /2/92-93(55)/7/90-91 and quash the same and consequently forbearing the respodnent from taking any steps and proceedings further to acquire or purchase the property 51 I Main Road, Gandhi Nagar, Adayar, Madras-20 terms of Chapter XXC of the Income Tax Act (W.P.4700/93)

For appellants : Mr. P.S. Raman,Sr.Counsel
in WA.No.487/97 for Mr. S. Srinivasaraghavan
and for R.3 in
WA.No.495/97.

For appellant : Mr. R. Krishnamurthy,Sr.Counsel
in WA.No.495/97 for Mr. Sathishparasaran
and for R.2 in
WA.No.487/97.

For respondents : Mrs. Pushyasitaraman
Senior Standing Counsel for
Income-tax.

..

COMMON JUDGMENT

(Judgement of the Court was delivered by P. SATHASIVAM,J.)

The order of pre-emptive purchase passed by the Appropriate Authority, Income-tax Department under Chapter XX-C of the Income-tax Act, 1961, is under challenge in these appeals.

2. The above writ appeals are directed against the common order of the learned single Judge dated 31.03.1997 made in W.P.Nos.4584 and 4700 of 1993, in and by which the learned Judge, after rejecting all the contentions urged by the petitioners, confirmed the order of pre-emptive purchase made by the Appropriate Authority in respect of property at No.51, Ist Main Road, Gandhi Nagar, Adyar, Chennai 600 020.

3. The petitioner in W.P.No.4584 of 1993, viz., M/s. Ashok Leyland Finance Ltd., Chennai 18, is the appellant in W.A.No.487 of 1997. The petitioner in W.P.No.4700 of 1993, P. Nataraja Sastry is the appellant in W.A.No.495 of 1997.

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4. Brief facts necessary for the disposal of the above appeals are as under:

M/s. Ashok Leyland Finance Limited, petitioner in W.P.No.4584 of 1993, (hereinafter referred to as "the Company") is a Company incorporated under the Companies Act, 1956 and engaged in hire-purchase and leasing business. On 30.04.1990, the petitioner entered into an agreement with one P. Nataraja Sastry (petitioner in W.P.No.4700 of 1993) for development of the property situate in No.51, Ist Main Road, Gandhi Nagar, Adyar, Chennai 20, measuring a total extent of 5 grounds and 1050 sq.ft. for a sum of Rs.30,81,700/-. The Company and the said Nataraja Sastry submitted a statement in Form No.37-I of the Income Tax Act, 1961 (in short "the Act") on 02.05.1990 to the first respondent - Appropriate Authority, Income-tax Department. Then, the first respondent passed an order dated 13.07.1990 acquiring the property and requesting the transferor to handover the property within 15 days from the date of order. Nataraja Sastry (hereinafter referred to as "the petitioner") filed a writ petition (W.P.No.12608 of 1990), questioning the order passed by the first respondent on the ground that no opportunity was given before passing the order. In the meantime, the Supreme Court in 199 ITR 530 (C.B.Gowtham vs. Union of India) held that, if the authority passed non-speaking order without giving an opportunity, that would amount to violation of the principles of natural justice. In consequence of the said judgement of the Supreme Court, this Court set aside the order impugned therein with a direction to the first respondent to hear the matter afresh after giving opportunity to the transferor and transferee and pass a speaking order. Pursuant to the same, the first respondent issued a show cause notice to the petitioner. The petitioner sent a reply to the said show cause notice and after considering the reply as well as hearing the arguments advanced by the counsel for the petitioner, the first respondent passed the impugned order dated 23.02.1993, holding that it is a fit case for acquiring the property under Chapter XX-C of the Act. Questioning the said order, both the Company and the petitioner filed W.P.Nos.4584 and 4700 of 1993 respectively, on various grounds.

5. On behalf of the first respondent, Member of the Appropriate Authority filed a counter affidavit explaining their position. It is stated that the Appropriate Authority considered all relevant aspects, including the value of the property sold next to it, guideline value of the State Registering Authority and the law declared by the Supreme Court in (1993 (1) SCC 78 = 199 ITR 530 - C.B. Gowtham vs. Union of India), and after affording opportunity to the petitioner and the Company, exercising the right of pre-emptive purchase under Chapter XX-C of the Act, the impugned order of purchase was passed.

6. The learned single Judge, after finding that the stand taken by the Appropriate Authority, viz., there had been substantial under-valuation by the petitioner, which was in excess of 15% of the market value, rejected all the contentions and finally dismissed both the writ petitions; hence, the present writ appeals.

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7. Heard Mr. P.S. Raman and R. Krishnamurhty, learned senior counsel for the respective appellants and Mrs. Pushya Sitaraman, learned senior standing counsel for the Income-tax Department.

8. Main grounds of challenge:

(i) The subject property has been compared with Malar Hospitals' property by the Appropriate Authority, which is not a fit property to be compared with the subject property;

(ii) The existence of long-standing tenants in the property has not been properly considered;

(iii) The loss of original title deeds of the property has not been properly considered;

(iv) The order of Appropriate Authority relies on two other comparative sale instances, for which notice was not given to the petitioner; and hence, it is against the principles of natural justice;

(v) The guideline value of the property has not been properly considered;

(vi) The purchase order stands abrogated under Sections 269-UG and 269-UH of the Act, as the apparent consideration has neither been tendered to the vendor, nor deposited with the Appropriate Authority by the Central Government within 30 days from the date of the order; and

(vii) A subsequent sale deed in 1992 by Malar Hospitals' on the same road at a lower rate was not taken note of by the Appropriate Authority and the same may be considered by this Court.

9. The learned senior standing counsel appearing for the Income-tax Department met all the contentions by placing relevant materials.

10. Before considering the various contentions, it is useful to refer the relevant provisions of the Act. Chapter XX-C of the Act relates to Purchase by Central Government of Immovable Properties in certain cases of Transfer. Section 269-UD enables the Appropriate Authority to order purchase by Central Government of immovable property. As per Section 269-UE, where an order under Sub-section (1) of Section 269-UD is made by the Appropriate Authority, such property shall on the date of such order vest in the Central Government. Section 269-UF speaks about consideration for purchase of immovable property by Central Government. Section 269-UG mandates that the amount of consideration payable under Section 269-UF shall be tendered to the person or persons entitled thereto within a period of one month from the end of the month in which the immovable property concerned is vested in the Central Government under Sub-section (1), or, as the case may be, Sub-Section (6) of Section 269-UE, failure to comply with above said provision, Section 269-UH makes it clear that the order to purchase the immovable property by the Central Government made under sub-section (1) of Section 269-UD shall stand abrogated and the immovable property shall stand re-vested in the transferor after the expiry of the aforesaid period. With these provisions, let us consider the submissions made by both parties.

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11. At the foremost, let us consider whether the adjacent property, viz., Door No.52, Ist Main Road, Gandhi Nagar, Adyar, Chennai 20 (Malar Hospitals' property) which had been taken for comparison is a fit property for comparison. According to the Appropriate Authority, the documents relating to the adjacent property (Malar Hospitals' property), which was taken into consideration is a sale agreement dated 01.08.1989, under which the land measuring about 15120 sq.ft. (approximately 6.3 grounds) was transferred for a consideration of Rs.68 lakhs. Based on the time schedule agreed for the payment of sale consideration, the value of the apparent consideration, as discounted under Rule 48-I came to Rs.66,15,529/-, that is to say Rs.10.39 lakhs per ground. According to the Appropriate Authority, in the light of the land rate at Rs.10.39 lakhs per ground as per the sale agreement dated 01.08.1989, as the date of agreement of sale in the instant case is 30.04.1990, the Appropriate Authority added 9% thereof for the in between period of nine months and fixed the market value at Rs.11.33 lakhs per ground. The Appropriate Authority has further stated that the extent of land under transfer in the instant case being 88% of 5 grounds and 1050 sq.ft., namely, 4.785 grounds, the fair market value as on 30.04.1990 would come to 4.785 x Rs.11.33 = Rs.54.21 lakhs. It is the claim of the Appropriate Authority that against the estimated fair market value of the property at Rs.54.21 lakhs, the value of apparent consideration (after discounting) in the instant case is mentioned Rs.30,52,891/-, which is nearly 77.60% of the estimated fair market value. Accordingly, the Appropriate Authority has concluded that as the fair market value exceeded the apparent consideration by more than 15%, it raised a presumption that there was under-statement of sale consideration in the agreement of sale with a view to evade "tax". Pursuant to such conclusion, a show cause notice was issued for appearance of the petitioner on 18.02.1993. The petitioner filed a written submission before the Appropriate Authority highlighting various aspects. The very same objections projected before the Appropriate Authority and the learned single Judge were highlighted before us.

12. Learned senior counsel for the appellants mainly contended that the market value of the property also depends upon the Floor Space Index (FSI) deriving from the said property. It is highlighted that the adjacent property measuring an extent of 6.3 grounds was purchased by M/s. Malar Hospitals' under registered Document No.4110/89 dated 14.12.1989 for the purpose of constructing a multi-storey Hospital complex and at the time of sale itself, both the vendor and the purchaser, M/s. Malar Hospitals' were well aware of the scope of development to be made on the property and now the building standing on that property (seven storey hospital complex) is a testimony to the fact that FSI in excess of 2.5 times was achieved, which vendor and the vendee would definitely have been aware even at the initial stage of negotiation.

13. As pointed out earlier, it is the opinion of the Appropriate Authority that the value of the land (Malar Hospitals') which was worked out at Rs.10.39 lakhs per ground is applicable to all adjacent properties. As rightly pointed out by

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the learned senior counsel for the appellants that the value of a property should be assessed taking into account the prospective developmental scope of the said property. It was pointed out before the Appropriate Authority, the learned single Judge and before us that in respect of the property at No.52, the FSI in excess of 2.5 times was ultimately achieved. Further, it is pointed out that if the market value of the property is Rs.10.39 lakhs per ground, when it fetches FSI in excess of 2.5 times, then, the value of the same property will be only at 6.234 lakhs per ground, when it offers FSI in excess of 1.5 times. It is also pointed out that the subject property measuring an extent of 5.4375 grounds has leading dimensions in which the shorter side is under "30 mts" (100 feet). It is their claim that this factor alone shows that the existing site would not lend itself for developing a multi storey building upon it fetching a higher FSI.

14. The Development Control Rules (DCR) of Chennai Metropolitan Development Authority (CMDA) is very specific about the provisions for multi-storey building with FSI from 1.50 to 2.75 times in excess. The pith and substance of the objection of the appellants against the comparison with the adjacent property, viz., M/s. Malar Hospitals', is that FSI is excess of 2.5 times was achieved in the Malar Hospitals' property, whereas only FSI in excess of 1.50 times is applicable to the instant case. Therefore, according to them, the comparison is not fair. It is also projected that inasmuch as the multi-storey construction beyond 1.5 FSI would not be possible in the instant case, the price was negotiated accordingly.

15. It is not in dispute that FSI does play a crucial role in the determination of market value of properties. It is also not in dispute that under the DCR of CMDA, there are several criteria laid down covering the permissible FSI, such as land use zone in which the property is situated, road width, size of the plot, frontage, etc. There is no dispute that both the lands viz. properties at Door Nos.51 and 52 are on the same First Main Road, Gandhi Nagar, Adyar, Chennai 20. As far as the size of the properties is concerned, the property at Door No.51, i.e., the subject property is about 5.44 grounds, whereas the adjacent property at door No.52 with which comparison is made is about 6.3 grounds. It is also not in dispute that the frontage available in the instant case is 90 feet, while the adjacent property with which comparison was made has a frontage of 102 feet. Further, both the properties are situated in Mixed Residential Zone fetching the same FSI of 1.5. As rightly argued by the learned senior counsel for the appellants, the advantages found in the adjacent property are not available to the subject property. The claim of the appellants that the purchaser of the adjacent property had in their mind to construct building for hospital and thereby achieving FSI in excess of of 2.5 times, and hence they offered higher price. On the other hand, such advantages are not available to the subject property. Further, as admitted by the Appropriate Authority, the frontage of the subject property is only 90 feet, whereas in the adjacent property the same is 102 feet. All these relevant aspects, though available before the Appropriate Authority, were not properly considered. Likewise,

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the learned single Judge did not consider those relevant facts when the adjacent property (52 Ist Main Road, Gandhi Nagar, Adyar, Chennai 20) was compared with the property in question. The objection of the appellants with regard to comparison of the adjacent property at No.52, Ist Main Road, Gandhi Nagar, Adyar, Chennai 20, with the subject property is well founded.

16. Next it is contended that the Appropriate Authority has not considered the instances of long standing tenant in the subject property. In support of the above contention, appellants have submitted a copy of letter dated 31.08.1989 received from the tenant, viz., Animal Welfare Board of India signed by its Secretary Mr. M. Sureshkumar addressed to Mr. Nataraja Sastry. The said letter was placed before the Appropriate Authority. The learned senior counsel for the petitioners pointed out that the said letter clearly shows the efforts taken by the Statutory Body for housing its office and in that letter the State Government was also requested to provide accommodation. It is also highlighted that the appellants were able to pressurise the Animal Welfare Board to vacate the premises and the petitioner/P. Nataraja Sastry, on obtaining possession, arranged for demolition of existing superstructure. The application for demolition of existing structure was submitted to the Competent Authority - Corporation of Madras in December, 1989. The Corporation, after scrutinising the said application, issued demolition advice by proceedings dated 15.12.1989. The petitioner/P.Nataraja Sastry also remitted demolition charges on 19.12.1989. The copies of demolition advice and challan for remittence were placed before the Appropriate Authority. Though on the date of agreement the subject property was free from tenancy as seen from Column 3 of 37-I statement dated 02.05.1990, the claim of the appellants regarding various efforts into evicting the tenant, viz., Animal Welfare Board from the premises in question, we are of the view that though the said aspect is not a primary factor, but it is one of the relevant factor to be considered while arriving at value of the property.

17. It is the claim of the appellants that the loss of original title deeds of the property has not been properly considered by the Appropriate Authority as well as the learned single Judge. It is the case of the appellants that the property in question was mortgaged in Indian Bank, Madras and after the redemption of mortgage, the said Bank did not return the original title deeds relating to the property and the bank informed that the title deeds had been lost, but refused to admit the same in writing. It is also brought to our notice that the said property had got entangled in the litigation with "Daily Thanthi". In support of the fact that the Indian Bank had lost the title deeds of the property in question,it is brought to our notice that a public notice calling for claims in respect of the property from any person having charge, mortgage, etc. issued in "The Hindu" dated 09.08.1989 and "Daily Thanthi" on 11.08.1989 and no claim was received by the petitioner, P. Nataraja Sastry. It is also true that the encumbrance certificate produced for the period from 01.01.1959 to 08.06.1989 does not reveal any existing encumbrance over the property. Though the Appropriate Authority concluded

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that in view of the legal opinion giving clean chit as to the title, despite loss of title deeds, it cannot be accepted that mere loss of title deeds should decrease the value of the property, the fact that the petitioner/vendor was not having original title deeds at the time of transaction is a relevant factor and undoubtedly, it would have the bearing on the price, as well as the mind of the intending purchaser. Though the Appropriate Authority and the learned single Judge considered this aspect, loss of title deeds of the property in question is one of the relevant factors, undoubtedly, it would diminish the value of the property.

18. Learned senior counsel for the appellants next pointed out that the Appropriate Authority relied on two other comparative sale instances at the time of passing the final order. Admittedly, notice regarding the said sales was not given to the appellants, hence it is against the principles of natural justice. It is not in dispute that in the show cause notice dated 03.02.1993, the authority has referred only to the adjacent property, viz., Door No.52, Ist Main Road, Gandhi Nagar, Adyar, Chennai 20 (Malar Hospitals' property). While passing the final order, the authority relied not only the said adjacent property, but also two other properties, viz., door No.47, Ist Main Road, Gandhi Nagar, Adyar, Chennai 20 and door No.12, Ist Main Road, Kasturibha Nagar, Adyar, Chennai 20. In the order of the Appropriate Authority, the adjacent property viz., 52, Ist Main Road, Gandhi Nagar, Adyar, Chennai 20, was chosen as the most appropriate and relevant by virtue of its location, as the immediate adjacent property next to the subject property in question, but absolutely there is no reference as to other two properties situate at First Main Road, Gandhi Nagar and Kasturbha Nagar respectively. In para 7.1 of the order, the Appropriate Authority has taken note of all the three instances, including the Malar Hospitals' property for comparison with the subject property. In the same paragraph, the Appropriate Authority, after adverting to the details regarding the properties at Door No.47, Ist Main Road, Gandhi Nagar, and No.12 Ist Main Road, Kasturbha Nagar, arrived at a conclusion that in the instant case the price at Rs.6.38 lakhs per ground, is below 15% margin fixed by the Supreme Court. It is clear from the above order of the Appropriate Authority that, particularly, para 7.1 and 7.2, the said Authority heavily relied on the other two properties which were admittedly not mentioned in the show cause notice. In such circumstances, as rightly pointed out by the learned senior counsel for the appellants, the appellants were not given opportunity to ascertain the details of those properties, which were discussed and considered by the Appropriate Authority. It is a relevant aspect affecting the principles of natural justice and we are of the view that both the Appropriate Authority and the learned single Judge have failed to consider the grievance of the appellants on this aspect.

19. Now, let us consider the claim of the appellants that the guideline value of the property was not considered by the Appropriate Authority as well as learned single Judge. It is true that if we consider the guideline rate applicable to the area in

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question, the value mentioned in the sale agreement cannot be said to be unreasonable. However, as rightly observed by the Appropriate Authority, the guideline value is for the purpose of registering the document and the same cannot be considered as the market value/real value of the property prevailing on the relevant date. In such circumstances, we are of the view that the grievance of the appellants relating to non-consideration of guideline value of the property cannot be accepted.

20. The learned senior counsel for the appellants highlighted that subsequent sale deed of the year 1992 by the very same Malar Hospitals' on the same road at a lower rate may be considered by this Court. In fact, a petition in WAMP.No.1755 of 2006 was filed under Section 151 read with Order 41 Rule 27 of the Code of Civil Procedure, praying this Court to accept a copy of the sale deed, registered as document No.3658/1992 as additional evidence. As stated earlier, the main ground for rejection of the consideration mentioned in the sale agreement dated 30.04.1990 is that the sale agreement dated 01.08.1989 in respect of Malar Hospitals property situated at No.52, Ist Main Road, Gandhi Nagar, Adyar, Chennai 20 reflected a higher sale consideration of 10.39 lakhs per ground compared to the subject transaction, viz., Rs.6.38 lakhs per ground. Though it was argued on behalf of the petitioners before the Appropriate Authority and before the learned single Judge that the properties were not comparable and that the requirement of the purchaser would determine the sale consideration, such argument was rejected by both the Appropriate Authority as well as the learned single Judge. It is brought to our notice that, the petitioner recently come to know about the sale deed of the year 1992 registered subsequent to the subject transaction. The said sale deed was registered as document No.3658/1992 in respect of another property in the same area situated at 55, Ist Main Road, Gandhi Nagar, Adyar, Chennai 20, and the said property was purchased by Malar Hospitals. In the said sale deed, the sale consideration is shown as Rs.6.09 lakhs per ground. By pointing out the said document it is argued that the said sale deed is relied upon only to demonstrate the fact that the sale consideration mentioned in respect of the property at No.52 Ist Main Road, Gandhi Nagar, Adyar (Malar Hospitals') would not reflect the actual price in that area at the relevant point of time and that the property at No.52 (Malar Hospitals') itself is incapable of being compared with subject property. As rightly pointed out, it can be found from document No.3658/1992 that in respect of the property on the same road purchased three years after the subject transaction, the sale consideration is only stated to be Rs.6.09 lakhs per ground. In the light of the subsequent transaction referred to above which reflects a lesser sale consideration, the appellants' contention regarding the consideration mentioned in the sale deed in question has to be accepted. It is relevant to note that the petitioner has contended that the Appropriate Authority took into consideration an incomparable property (Malar Hospitals') for comparison. We are also satisfied that the sale deed of the year 1992 gives a true picture of the market value in the area in question. We accept the contention of the appellants with reference to the transaction that took place in 1992, which is

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also relating to a property adjacent to the property in question. Hence, we allow WAMP.No.1755 of 2006.

21. Finally, let us consider whether the purchase order stands abrogated under Sections 269 UG and 269 UH of the Act, as the apparent consideration has neither been tendered to the vendor nor deposited with the Appropriate Authority by the Central Government within 30 days of the order as stipulated in those provisions.

> "269UG.Payment or deposit of consideration
>
> (1) The amount of consideration payable in accordance with the provisions of Section 269UF shall be tendered to the person or persons entitled thereto, within a period of one month from the end of the month in which the immovable property concerned becomes vested in the Central Government under sub-section (1), or, as the case may be, sub-section (6), of section 269UE: Provided that if any liability for any tax or any other sum remaining payable under this Act, the Wealth-tax Act, 1957 (27 of 1957), The Gift-tax Act, 1958 (18 of 1958), the Estate Duty Act, 1953 (34 of 1953), or the Companies (Profits) Surtax Act, 1964(7 of 1964), by any person entitled to the consideration payable under Section 269UF, the appropriate authority may, in lieu of the payment of the amount of consideration, set off the amount of consideration or any part thereof against such liability or sum, after giving an intimation in this behalf to the person entitled to the consideration."
>
> "269UH. Re-vesting of property in the transferor on failure of payment or deposit of consideration.
> (1) If the Central Government fails to tender under sub-section (1) of said section 269UG or deposit under sub-section (2) or sub-section (3) of the said section, the whole or any part of the amount of consideration required to be tendered or deposited thereunder within the period specified therein in respect of any immovable property which has vested in the Central Government under sub-section (1) or, as the case may be, sub-section (6) of section 269UE, the order to purchase the immovable property by the Central Government made under sub-section (1) of section 269UD shall stand abrogated and the immovable property shall stand re-vested in the transferor after the expiry of the aforesaid period."

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It is clear that Section 269 UG of the Act mandates that the amount of consideration shall be tendered to the person entitled thereto within a period of one month from the end of the month in which the immovable property concerned becomes vested in the Central Government. Section 269 UH of the Act makes it clear that if the Central Government fails to tender or deposit either whole or any part of the amount of consideration required to be tendered or deposited within the period specified in Sub-section (1) of Section 269 UG, the order to purchase the immovable property by the Central Government made under Sub-section (1) of Section 269 UD shall stand abrogated, and it revest in the transferor after the expiry of the aforesaid period. The above provisions have been interpreted in various decisions.

22. In the case of M.P. Poddar vs. Appropriate Authority (1999 ITR Vol.240 page 372), a Division Bench of Delhi High Court, after considering the relevant provisions in Chapter XX-C has held that as per the Scheme of the said Chapter, even though the agreement between the parties provides for deferred payment of consideration for transfer it is made obligatory for the Central Government to tender the entire consideration within the stipulated period, i.e., within a period of one month from the end of the month in which the immovable property vests in the Central Government, namely, on the date of purchase order and failure to tender the consideration within the said period results in abrogation of the said order.

23. In the case of Union of India vs. Dr. A.K. Garg (2002 ITR Volume 256 Page 660), the Hon'ble Supreme Court has held that the amount under Section 269 UG had to be tendered or even if there was any dispute, the same should have been deposited with the Appropriate Authority. After finding that there is no material forthcoming to show that an offer was made before the cut-off date, viz., 30th June, 1993, accepting the stand taken by the Delhi High Court, the Supreme Court dismissed the appeal filed by Union of India. It is therefore clear from the above said decision that even if there is any dispute, the amount has to be deposited, failing which Section 269 UH will come into operation.

24. In the case of Sita Cherian Mukherjee vs. Appropriate Authority (1997 ITR Vol.228 Page 236), Calcutta High Court has held that, Section 269UG of the Act clearly lays down that the amount of consideration payable in accordance with the provisions of Section 269UF shall be tendered to the person or persons entitled thereto, within the period prescribed therein, failing which the rigour of Section 269UH is squarely attracted. The Court further held that the consequences as stipulated in Section 269UH are mandatory and inescapable.

25. In the case of Ashis Mukherji vs. Union of India (1996 ITR Vol.222 Page 168), a Division Bench of Patna High Court has held,

> "Under section 269UH, the property revests in the transferor on failure of payment or deposit of consideration. In the present case we have found that the payment has not been tendered in

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terms of sub-section (1) of section 269UG. The property, therefore, which had been vested in the Central Government by virtue of order made under section 269UD(1), that order stands abrogated and the property now revests in the transferor, i.e., the petitioner. ...."

26. In the case of Hotel Mardias Private Limited vs. Union of India and others (1996 Vol.220 ITR Page 94), a Division Bench of Gujarath High Court has concluded,

"Once we have come to the conclusion that the amount of consideration was not tendered within the time prescribed under section 269UG and there was no ground for making deposit to the appropriate authority the consequence which has been provided under section 269(UH) would necessarily follow, namely the order of purchase shall stand abrogated and the immovable property shall stand reverted to the transferor on the expiry of the period in which amount was to be tendered but has not been so tendered."

27. The learned senior standing counsel for the Income Tax Department, relying on a decision of this court in the case of R. Padma vs. Appropriate Authority reported in (1990 Vol.185 ITR Page 269) contended that if there is an order of stay at the instance of any of the parties to the agreement of sale, the Central Government cannot be blamed for not tendering or depositing the amount. No doubt, in the penultimate paragraph, the Division Bench has observed that in matters of this nature, whenever a stay order is obtained at the instance of any of the parties to the agreement of sale and if there is any interdiction by the court preventing the authorities from pursuing further steps consequent to the issue of order under Section 269 UD (1), then there would be no directive from the Court to the Income-tax Department to pay the sale consideration during the pendency of proceedings in Court.

28. Apart from the said decision, she also relied on the case of Mrs. Sooni Rustam Mehta vs. Appropriate Authority (1991 Vol.190 ITR Page 290), wherein the Division Bench of Andhra Pradesh High Court held that the petitioners had filed a writ petition challenging the provisions of the Act and so long as the writ petition was pending, there was a dispute as to the entitlement of the petitioners to receive the amount of compensation and the authorities were justified in not making deposit with the appropriate authority.

29. On going through the factual details, we are of the view that both the decisions relied on by the learned senior standing counsel for the Income-tax Department are not helpful to the Department . In the Andhra Pradesh case, there is no dispute as to the entitlement of the petitioners to receive the amount of compensation. Secondly, the decision of the Division Bench of this Court in 185 ITR 269 (cited supra) deals with the later part of Section 269 UD(1), wherein the 5th proviso to Sub-section (1)

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makes it clear that where any stay has been granted by any court against the passing of an order for the purchase of immovable property, the said period is to be excluded. Section 269 UD relates to order by appropriate authority for purchase by Central Government. But, there is no similar proviso in 269 UG(1), excluding the period of stay by the Court. In those circumstances, even if we accept that the appellants have filed writ petitions before this Court questioning the order of Appropriate Authority, in the absence of any such saving clause, merely because the writ petitions were pending, non compliance of 269 UG (1) within the time prescribed, undoubtedly, would attract the revesting of the property in question in favour of the transferor under Sub-section (1) of Section 269 UH. We are of the clear view that under Section 269UH (1) if the payment has not been tendered in terms of sub-section (1) of Section 269 UG, the said order stands abrogated and the property which had been vested in the Central Government by virtue of the order made under Section 269 UD (1), stands revested in the transferor, i.e., the petitioner. To put it clear, under Section 269 UH, the property will stand revested in the transferor on failure of payment or deposit of consideration. In our case, admittedly, there is no offer or communication regarding the deposit of amount with the Appropriate Authority. Inasmuch as the amount of consideration has not been tendered in terms of Sub-section (1) of Section 269 UG to the transferor, the order passed under Section 269 UD(1) stands abrogated. In view of the admitted factual position regarding non compliance of the above mandatory provision, the order of the Appropriate Authority is liable to be quashed on this ground also. These aspects have not been properly considered by the learned Judge.

30. The analysis of various instances pointed out by the appellants clearly show that all of them are relevant factors in valuing the property. The power vested in the authority under Chapter XX-C of the Act is a special power which is required to be exercised with great care and with atmost fairness. When the provisions enable the Government to take over any property, the authorities cannot exercise the power in an arbitrary manner. The object for which the provision was introduced cannot be ignored. It is needless to mention that it is meant to disclose the true price for the property brought to sale and thereby to prevent evasion of tax by parties to transaction. It is not in dispute that Chapter XX-C of the Act itself had been deleted from the statute book with effect from 01.07.2002. Further, failure to tender or deposit the amount of consideration within the prescribed period, the order to purchase immovable property by the Central Government under Sub-section (1) of Section 269UD shall stand abrogated and the property shall stand revested in the transferor. Having regard to the materials before the Appropriate Authority, it is clear that the market value of the property at the time of transaction could not be said to have been higher than the rate at which the appellants had agreed to sell and purchase the property. We are satisfied that the learned single Judge failed to take note of all the above mentioned relevant aspects but merely approved the order of the Appropriate Authority, which

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cannot be sustained on facts and on the basis of statutory provisions referred to above.

Under these circumstances, the common order of the learned Judge dated 31.03.1997 made in W.P.Nos.4584 and 4700 of 1993, is set aside and the order of pre-emptive purchase passed by the Appropriate Authority, Income-tax Department, dated 23.02.1993, is quashed. Accordingly, both the writ appeals are allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

kh

To

1.The Secretary to Government
Union of India
Ministry of Finance, New Delhi.

2. Appropriate Authority
Income-tax Department
New Incometax Building
No.108 Uthamar Gandhi Salai
First Floor, Chennai 600 034.

W.A.Nos.487 & 495 of 1997

BV (CO)

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